provide broadband PCS service within their cellular service areas are limited to holding only one of the 10 MHz BTA licenses.[51] A 20 percent attribution rule is used in applying this limitation.[52] In addition, to be eligible to apply for any of the 30 MHz broadband PCS license blocks, an applicant may have no more than a 20 percent ownership interest in a cellular carrier that has a service area with more than a 10 percent population overlap in the MTA or BTA in question.[53] The Commission concluded in September 1993 that the existing cellular attribution rules, "one percent for individual and five percent for publicly-traded corporations, are too restrictive . . . and would be administratively burdensome."[54] Despite this conclusion, the Commission now is proposing to impose an attribution rule set at a level deemed unacceptable.

The rules applicable to narrowband PCS licensees prohibit a single entity from holding more than three 50 kHz channels, paired or unpaired, in any geographic area.[55] A 5 percent attribution rule is also used in the narrowband PCS context.[56]

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51 *Id.* at 7745. In the *Broadband PCS Reconsideration Order*, the Commission adopted a number of changes in the rules applicable to broadband PCS licensees. Among these are amendments that will permit entities with attributable cellular interests covering 10 percent or more of the population in a PCS service area to, after January 1, 2000, and upon compliance with the five year construction requirement, acquire an additional 5 MHz of PCS spectrum. *Broadband PCS Reconsideration Order* at ¶ 67.

52 *Broadband PCS Second Report and Order*, 9 FCC Rcd at 7745.

53 *Id.* On reconsideration, the Commission adopted rule changes to permit entities with attributable interests in cellular companies whose combined cellular geographic service areas overlap between 10 and 20 percent of the PCS service area population to submit bids for more than 10 MHz of PCS spectrum, provided that these entities commit to divest themselves of sufficient attributable cellular interests so as to come into compliance with the eligibility rules within 90 days of receiving a PCS license. *Broadband PCS Reconsideration Order* at ¶ 144.

54 Broadband PCS Second Report and Order, 8 FCC Rcd at 7745.

55 Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, 8 FCC Rcd 7162, 7168 (1993) (First Report and Order), *recon.*, 9 FCC Rcd 1309 (1994). This rule was affirmed on reconsideration. *See* Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, 9 FCC Rcd 1309, 1312-13

Limitations specific to particular categories of CMRS offerings are a superior method for addressing the concerns raised in the *Further Notice*. At such time as new frequencies and technologies enable the authorization of additional CMRS offerings, the Commission can consider as part of the applicable rule making proceedings the need for limitations on aggregation of spectrum by a single entity in that particular service and as between that new service and any existing rule parts. This service-by-service approach ensures that the Commission has before it the specific information with which to make a considered decision in lieu of imposing a blanket cap that necessarily cannot account for unknown factual developments in the CMRS marketplace or technical environment.

This approach also overcomes or minimizes many of the thorny issues that otherwise would be associated with the adoption of a blanket CMRS spectrum cap. First, imposing a 40 MHz cap to the total quantity of CMRS spectrum that may be acquired is simply unreasonable. While the 40 MHz limit may be an appropriate limit for the aggregation of spectrum allocated in one type of broadband service, the 40 MHz cap is vastly too restrictive as applied to the spectrum allocated for all of the services classified as "commercial mobile" --cellular, PCS, SMRs, and paging, to name a few. In addition, the imposition of an overall 40 MHz CMRS spectrum cap would undermine the Congressional objectives that prompted this proceeding by preventing existing operators from being able to offer diverse service packages and from having access to new spectrum allocations as they become available.

Second, issues about geographic overlap seriously complicate any fair application of a blanket spectrum cap at this time. Different CMRS operations currently have a number of different service areas that overlap in a number of different ways --

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(1994) (Memorandum Opinion and Order) [hereinafter *"Narrowband PCS Reconsideration Order"*].

56 *Narrowband PCS Reconsideration Order*, 9 FCC Rcd at 1313.

MTAs and BTAs for PCS, MSAs and RSAs for cellular, self-defined for ESMR and paging operations. Any spectrum cap obviously must include mechanisms for determining what the overlaps are and ensuring that entities with permissible minority interests in a number of operations are not unfairly penalized in the context of a generally applied spectrum limitation. In the context of specific new services and the associated rule making proceedings, this task would be somewhat more manageable.

Third, a 5 percent across-the-board attribution rule is clearly too inclusive, and not necessary as a competitive matter. Moreover, the use of a 5 percent across-the-board attribution standard conflicts with the policies reflected in the recently adopted PCS rules, which apply a 5 percent attribution rule on a service-by-service basis and 20 percent rule where more than one service is at issue. This 20 percent rule also reflects the nature of the cellular licensing procedures, which led many entities to hold minority interests in a number of licensees.[57] The PCS rules thus afford greater flexibility for cellular carrier participation than would be permitted under the cap proposed in this docket.

In addition, it is manifest that a 5 percent attribution rule would prohibit existing operators from pursuing the development of new and innovative communications technologies on undeveloped spectrum in existing services or on future spectrum allocations dedicated to new services. As already discussed, these operators bring numerous benefits to new services that promote the effective development of such offerings and expedite the delivery of service to the public. Prohibiting existing operators from participating in new services would deprive the public of these benefits.

In summary, the imposition of a general CMRS spectrum cap is unwarranted, and its overall impact would hinder the development of competition in the mobile services marketplace. Furthermore, by thwarting the development of new services, the

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57 *Broadband PCS Reconsideration Order* at ¶ 110.

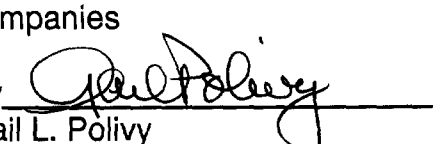
adoption of a general CMRS spectrum aggregation limit would be contrary to the public interest. Accordingly, the Commission should abandon its proposal to adopt a cap on the amount of spectrum that may be used for the provision of CMRS.

V. CONCLUSION

As the foregoing comments demonstrate, the Commission will best realize Congress's mandate that all functionally equivalent mobile radio service providers are subject to equal regulatory treatment if it formulates rules in a manner aimed at ensuring: (1) that no particular class of CMRS provider is given unfair regulatory advantages or subjected to unfair regulatory disadvantages; (2) that all CMRS providers are given the flexibility necessary to allow them to respond to marketplace demands and to participate in the development of new technologies; and (3) that unnecessary rules, policies, and restrictions are removed. The formulation of rules and policies consistent with these basic principles will promote the public interest and foster the development of competition in the mobile services marketplace. Because the Commission's proposal to impose a cap on the amount of CMRS spectrum that licensees may aggregate is antithetical to each of these principles, the spectrum cap proposal would not promote the goal of regulatory parity and should be abandoned forthwith.

Respectfully submitted,

GTE Service Corporation and its affiliated GTE domestic telephone, service and equipment companies

By 

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June 20, 1994

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 20th day of June, 1994 to all parties of record.

Ann D. Berkowitz